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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

No. 461

WILLIAM GREENOUGH AND
GEORGE HENRY WARREN, JR., Trustees,
Appellants

v.

TAX ASSESSORS of the City of Newport; and
EDWARD L. LEAHY, Tax Administrator of the State of Rhode Island,
Appellees

REPLY BRIEF FOR APPELLEES

JOHN C. BURKE
Special Counsel

ALEXANDER G. TEITZ
City Solicitor

Attorneys for Tax Assessors of City of Newport

JOHN H. NOLAN
Attorney General of the State of Rhode Island

Attorney for Edward L. Leahy, Tax Administrator of the State of Rhode Island
Appellees

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REPLY BRIEF FOR APPELLEES

I

GENERAL RULE IS THAT ASSESSMENT SHOULD BE APPORTIONED ACCORDING TO RELATIVE NUMBER IN THE TAXING STATE.

In Cooley on Taxation, Fourth Edition, Sec. 469, it is said: "As the trustee holds the legal title of the trust property . . . it is generally held that the situs of personal property held by a trustee, for the

purposes of taxation is the state or district where the trustee is domiciled, and this includes intangible as well as tangible personal property"; and in Sec. 470 the author says: "If there are two or more trustees, and part of them reside in one state and part in another state, the general rule is that the assessment of the property should be apportioned among them according to the relative number in the taxing state".

In *Mackay and Day trustees v. City and County of San Francisco*, 128 Cal. 678 (1900), the court held that bonds of foreign railroads payable in the City of New York, which were the property of a deceased resident of California were taxable at the domicile of the trustees, and where only one of the trustees was a resident of that State, and the non-resident trustee had the bonds on deposit in the City of New York, in the joint names of both of the trustees, were taxable in California only as to the undivided half thereof legally owned by the resident trustee.

II

SITUS OF INTANGIBLE PROPERTY IS THAT OF THE RESIDENCE OF OWNER WHETHER LIVING IN THE STATE OR OUTSIDE THE STATE.

In *San Francisco v. Mackay*, 22 Fed. 602 (at P. 606) it is said: "'The situs of incorporeal, intangible personal property for purposes of taxation is that of the residence of the owner when living outside the state as well as when living within it . . . . . under the other view there would be one law to govern the rights of residents and another those of non-residents."

In *Hinckley v. County of San Diego*, 49 Cal. App. 668, it is said: "Intangible property is incapable of a situs separate from its owner".

III

CONSTITUTIONAL RESTRICTIONS ON POWER OF TAXATION MUST BE STRICTLY CONSTRUED AGAINST THE LIMITATION.

In *Delany v. Lawery*, 154 Pac., 2d 674, which was followed in *Hoyt v. Woody*, 154 Pac., 2d 680, the court stated: "Constitutional restrictions on power of the legislature in the field of taxation must be strictly construed against the limitation".

In *Maguire v. Trefry*, 253 U. S. 12, 64 L. Ed. 12: it was held that a state may, without denying due process of law, tax the income received by a resident from securities held for her benefit by the trustees, in a trust created and administered by the law of another state, and not directly taxable to the trustee.

IV.

IT IS PRESUMED THAT TAXPAYER RECEIVES A BENEFIT FROM THE TAX.

In *Browning v. Hooper*, 3 Fed. 2d 160 the Court said: "Benefit is presumed from a general tax for a public purpose. People without children pay a school tax that other children may go to school. People without means of locomotion pay a road tax that other people may ride on the road and on the street. Such taxes are part of civilization's toll."

In *State v. Donald*, 160 Wis., 21 (at P. 125) it is stated: "The basic idea of tax and justification for it, is that it involves an exchange of equivalents. The taxing power obtains the contribution to the treasury and the contributor, in return, receives a legal consideration of a potential nature to his person or property, or both. It is often difficult to appreciate just where the consideration comes in".

V

DOMICILE IS THE CONTROLLING CONSIDERATION.

In *Lawrence v. State Tax Com. of Mississippi*, 286 U. S., 276; 76 L. Ed. 1102, the court said: "The obligation of one domiciled within a State to pay taxes there arises from unilateral action of the State government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expense of government and to distribute its burdens equally among those who enjoy its benefits. Hence, domicile in itself establishes a basis for taxation. Enjoyment of the privileges of residence within the State, and the attendant right to invoke the protection of its laws, are inseparable from the responsibility of sharing the costs of government" . . . . and cases cited.

In *Safe Deposit & T. Co. v. Virginia*, 280 U. S., 83 (Appellant's Brief pp. 9, 25, 26, 33) it was held that a Virginia assessment levied against a trustee domiciled in Maryland upon securities held by it in trust in its exclusive possession and control in Maryland was forbidden as an attempt to tax property without the jurisdiction.

In the annotation to the cited case in 67 ALR 408 in analyzing the cited case the following appears:

"In both the controlling opinion, delivered by Mr. Justice McReynolds, and a concurring opinion, delivered by Mr. Justice Stone, in *Safe Deposit & T. Co. v. Virginia*, it is stated that the question whether a state has the power to lay a tax upon the fair value of any interest in a trust fund in the possession of a trustee resident in another state, actually owned by one of her resident citizens, was not presented for consideration, but Mr. Justice Stone seems to express a personal opinion that the equitable interest of the cestui que trust may be taxed in the state of his residence".

In *Central Hanover Bank and Trust Co. v. Kelly*, 319 U. S. 94, 87 L. Ed., 1282 at p. 96, the court said:

"It is much too late to contend that domicile alone is insufficient to give the domiciliary state the constitutional power to tax a transfer of intangibles where the owner, though domiciled within the state, keeps the paper evidences of the intangibles outside its boundaries. See *Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct., 277, 47 L. Ed., 439; *Blodgett v. Silberman*, 277 U. S. 1, 48 S. Ct., 410, 72 L. Ed. 749; *Curry v. McCanless*, 307 U. S., 357, 59 S. Ct., 900, 83 L. Ed., 1339, 123 A. L. R. 162 and cases cited. The command of the state over the owner, the obligations which domicile creates, the practical necessity of associating intangibles with the person of the owner at his domicile since they represent only rights which he may enforce against others — these are the foundation for the jurisdiction of the domiciliary state to tax (*Curry v. McCanless*, supra). We recently applied that principle to sustain, on facts very close to the present case, Oregon's power to tax a transfer of intangibles held in Illinois by one domiciled in

Oregon (*Pearson v. McGraw*, 308 U. S. 313). The execution of the present trust agreement in New York, the circumstances that the remaindermen as well as trustee were non-residents of the taxing state are quite immaterial. Domicile is the single controlling consideration in this situation, as it is in the case of the taxation of income derived from activities outside the state (*Lawrence v. State Tax Com.*, 286 U. S. 276, 279; *New York ex rel. v. Groves*, 300 U. S. 308)".

VI

CONCLUSION

The case of *Anthony v. Caswell*, 15 R. I., 159, cited on page 9 of appellants' brief has no application to this case because there the *trustee* was a *non-resident*. The court said on page 161 of 15 R. I.: "The statute, following the common rule, clearly recognizes executors, administrators, and trustees as the owners, for the purposes of taxation, of the property held in trust by them. And see *Greene v. Mumford*, 4 R. I., 313, 319. It is against them that the taxes are assessed, and no remedy is provided for the collection of taxes assessed against them, from resident *cestuis que trustent*. It will be noticed, too, that section 12 provides that when the *cestuis* are non-residents, the trustees shall nevertheless be taxed in the towns where they severally reside".

Newcomb v. Paige, 224 Mass., 516, cited on page 10 of Appellants' brief, the statute said: "if the trustee is not an inhabitant of the commonwealth", ... the whole theory of the decision is that the statute was to prevent double taxation and the court found a legislative purpose that the act should not apply to a non-

resident trustee. The court said the fund in another state should not be taxed where it is subject to taxation in the foreign state. The court did not say that if the legislative purpose was to so tax a fund in another state that such a tax would be unconstitutional.

The case of Dorrance's will cited on page 14 of appellants' brief — it appears on page 15 of the brief that there was no provision in the Pennsylvania statute "for dividing such trust property among resident and non-resident trustees for purposes of this tax". The question before this Court is not whether the Rhode Island statute by its terms applies to the facts of this case, but whether its application by the Tax Assessors was repugnant to the due process clause.

The case of *Blodgett v. Silberman*, 277 U. S. 1, cited at page 26 of appellants' brief — there the court felt that the principle of *mobilia sequuntur personam* "ought not to be applied if so to do would result in inescapable and patent injustice whether through double taxation or otherwise". In this case no claim of double taxation is made and no injustice could result where Rhode Island taxes only one-half the trust fund and New York taxes nothing.

The material from the middle of page 33 of appellants' brief to the end of the argument has no bearing on this case. The only question before this Court is whether a particular tax assessment on June 15, 1944, violates the due process clause. It makes no difference whether the State of Rhode Island can or cannot collect the tax assessed by an action in New York or in any other manner. As a matter of fact, the trustees paid this particular assessment under protest, and the action is a petition to recover back the tax paid. Furthermore, the constitu-

tionality of this particular assessment is in no way affected by the fact that George Henry Warren, Jr., might resign as trustee or change his residence from Newport or become disqualified to act as trustee. The only question for this Court is whether, when an assessment was made against George Henry Warren, Jr., trustee, as a resident, under the terms of the Rhode Island statute, such assessment was constitutional. If the beneficiary of the trust should die, the fund would be, by the terms of the will, payable to the remaindermen, and Rhode Island would not be able to levy any further tax. However, that would in no way affect the validity of the particular assessment involved.

On page 3 of appellants brief, the statement is made that "the undisputed facts are contained in the petition filed in the Superior Court of the County of Newport, Rhode Island, by the appellants herein (R. I-5), and are as follows: . . . . " and on page 6 of appellants' brief it is stated:

> "4. That the trustees of said trust fund hold said trust fund, so located in the State of New York, as joint tenants, and their title and interest in said fund as such joint tenants are not severable or divisible for the purposes of taxes or otherwise, and their powers must be exercised as a unit . . . "

And also stated on page 6:

> "5. That George Henry Warren, Jr., as an individual resident in Rhode Island, does not, as trustee, exercise his powers as trustee in Rhode Island, nor does he, as trustee, enjoy any benefits or protection from the laws of Rhode Island".

The appellees earnestly assert that it is not undisputed that the title and interest of the trustees in the trust fund located in New York are not severable or divisible for

the purpose of taxation, nor is it undisputed that George Henry Warren, Jr., does not as trustee enjoy benefit or protection from the laws of Rhode Island. These are the very contentions upon which appellants seek to reverse the judgment of the Superior Court of Rhode Island. The opinion of the Rhode Island Supreme Court contained a considerable discussion as to whether George Henry Warren, Jr., as trustee would or might enjoy benefit or protection from the laws of Rhode Island. (R. 47-49).

Respectfully submitted,

JOHN C. BURKE
Special Counsel

ALEXANDER G. TEITZ
City Solicitor

Attorneys for Tax Assessors of City of Newport

JOHN H. NOLAN
Attorney General of the State of Rhode Island

Attorney for Edward L. Leahy, Tax Administrator of the State of Rhode Island

Appellees

Newport, R. I.
February, 1947

SUPREME COURT OF THE UNITED STATES

No. 461.—October Term, 1946.

William Greenough and George Henry Warren, Jr., Trustees, Appellants, *v.* Tax Assessors of the City of Newport; and Edward L. Leahy, Tax Administrator of the State of Rhode Island.	Appeal from the Superior Court of the County of Newport, State of Rhode Island.

[June 9, 1947.]

Mr. Justice Reed delivered the opinion of the Court.

Appellants are testamentary trustees of George H. Warren, who died a resident of New York. His will was duly probated in that state and letters testamentary issued to appellants as executors. A duly authenticated copy of said will was filed and recorded in Rhode Island and there letters testamentary were also issued. Letters of trusteeship were granted to appellants by a surrogate's court in New York. None were needed or asked for or granted by Rhode Island. At all times pertinent to this appeal, appellants, as trustees under the will, held intangible personalty for the benefit of Constance W. Warren for her life and then to certain as yet undetermined future beneficiaries.

The evidences of the intangible property in the estate of George H. Warren and in the trust in question were at all times in New York. The life beneficiary and one of the trustees are residents of New York. The other trustee resides in Rhode Island. During the period in question, he did not, however, exercise his powers, as trustee, in Rhode Island.

A personal property tax of $50 was assessed by the City of Newport, Rhode Island, against the resident trustee upon one-half of the value of the corpus of the trust. The applicable assessment statute for *ad valorem* taxes appears

in the margin.[1] At the time of this assessment, the property consisted of 500 shares of the capital stock of Standard Oil Company of New Jersey. The tax was paid by the trustees and this suit instituted, under appropriate state procedure, in the Superior Court of the County of Newport to recover the tax from the city. The Superior Court by decision denied the petition. A bill of exceptions was prosecuted by these petitioners to the Supreme Court of Rhode Island which overruled the exceptions and remitted the case to the superior court.[2] Thereupon judgment was entered for the appellees and an appeal allowed to this Court. All questions of state procedure and of the applicability of the state statute to the resident trustee in the circumstances of this case were foreclosed for us by the rulings of the Supreme Court of Rhode Island.[3]

The appellants' contention throughout has been that the Rhode Island statute, under which the assessment was made, if applicable to the resident trustee, was unconstitutional under the due process clause of the Fourteenth Amendment to the Constitution of the United States. Their objection in the state courts and here is that Rhode

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[1] General Laws of Rhode Island (1938), c. 30, § 9:

"*Fifth.* Intangible personal property held in trust by any executor, administrator, or trustee, whether under an express or implied trust, the income of which is to be paid to any other person, shall be taxed to such executor, administrator, or trustee in the town where such other person resides; but if such other person resides out of the state, then in the town where the executor, administrator, or trustee resides; and if there be more than one such executor, administrator, or trustee, then in equal proportions to each of such executors, administrators, and trustees in the towns where they respectively reside."

[2] General Laws of Rhode Island (1938), c. 31, § 14; c. 545, § 6, as amended by c. 941, Public Laws of Rhode Island (1939–40); *Greenough* v. *Tax Assessors*, 71 R. I. 477.

[3] *Chase Securities Corporation* v. *Donaldson*, 325 U. S. 304, 311; see *Huddleston* v. *Dwyer*, 322 U. S. 232, 237; *American Federation of Labor* v. *Watson*, 327 U. S. 582, 595.

Island cannot tax the resident trustee's proportionate part of these trust intangibles merely because that trustee resides in Rhode Island. Such a tax, they urge, is unconstitutional under the due process clause because it exacts payment measured by the value of property wholly beyond the reach of Rhode Island's power and to which that state does not give protection or benefit. Appellants specifically disclaim reliance upon the argument that the Rhode Island tax exposes them to the danger of other *ad valorem* taxes in another state.[4] The same concession was made in the Supreme Court of Rhode Island.[5] We therefore restrict our discussion and determination to the issue presented by appellants' insistence that Rhode Island cannot constitutionally collect this tax because the state rendered no equivalent for its exaction in protection of or benefit to the trust fund.

For the purpose of the taxation of those resident within her borders, Rhode Island has sovereign power unembarrassed by any restriction except those that emerge from the Constitution. Whether that power is exercised wisely or unwisely is the problem of each state. It may well be that sound fiscal policy would be promoted by a tax upon trust intangibles levied only by the state that is the seat of a testamentary trust.[6] Or, it may be that the actual domicile of the trustee should be preferred for a single tax. Utilization by the states of modern reciprocal statutory tax provisions may more fairly distribute tax benefits and

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[4] See McKinney's Consolidated Laws of New York, Tax Law, §§ 3, 350 (7), 365, 369, 377. *Fidelity & Columbia Trust Co.* v. *Louisville*, 245 U. S. 54. Compare *Blackstone* v. *Miller*, 188 U. S. 189; *Curry* v. *McCanless*, 307 U. S. 357, 363; *Graves* v. *Elliott*, 307 U. S. 383; *Graves* v. *Schmidlapp*, 315 U. S. 657; *State Tax Comm'n* v. *Aldrich*, 316 U. S. 174, 177, with *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204; *First National Bank* v. *Maine*, 284 U. S. 312.

[5] *Greenough* v. *Tax Assessors*, 71 R. I. 477, 488.

[6] Compare *Harrison* v. *Commissioner of Corporations and Taxation*, 272 Mass. 422.

burdens, although the danger of competitive inducements for obtaining a settlor's favor are obvious.[7] But our question here is whether or not a provision of the Constitution forbids this tax. Neither the expediency of the levy nor its economic effect on the economy of the taxing state is for our consideration.[8] We are dealing with the totality of a state's authority in the exercise of its revenue raising powers.

The Fourteenth Amendment has been held to place a limit on a state's power to lay an *ad valorem* tax on its residents.[9] Previous decisions of this Court have held that mere power over a resident does not permit a state to exact from him a property tax on his tangible property permanently located outside the jurisdiction of the taxing state.[10] Such an exaction, the cases teach, would violate the due process clause of the Fourteenth Amendment, because no benefit or protection adequate to support a tax exaction, is furnished by the state of residence.[11] The domiciliary state of the owner of tangibles permanently located in another state, however, may require its resident to contribute

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[7] Compare Mr. Justice Holmes' dissent, *Baldwin* v. *Missouri*, 281 U. S. 586.

[8] *State Tax Comm'n* v. *Aldrich*, 316 U. S. 174, 181.

[9] See *Lawrence* v. *State Tax Comm'n*, 286 U. S. 276, 279. Art. I, § 10, cl. 2 and 3, contain limitations on a state's power to levy import or export or tonnage duties.

[10] *Union Transit Co.* v. *Kentucky*, 199 U. S. 194, 202; *Frick* v. *Pennsylvania*, 268 U. S. 473, 488; *Cream of Wheat Co.* v. *Grand Forks*, 253 U. S. 325, 328–29; *Curry* v. *McCanless*, 307 U. S. 357, 363–65, and note 3; see *Wisconsin* v. *J. C. Penney Co.*, 311 U. S. 435, 444; *State Tax Comm'n* v. *Aldrich*, 316 U. S. 174, 178.

[11] Even where our cases have spoken of power over the person as though it alone might be a sufficient justification for *ad valorem* taxation of a resident on tangibles outside the taxing jurisdiction, the language was used in instances where there were other bases for the tax. *State Tax on Foreign-held Bonds*, 15 Wall. 300, 319; *Southern Pacific Co.* v. *Kentucky*, 222 U. S. 63, 76; *Pearson* v. *McGraw*, 308 U. S. 313, 318.

to the government under which he lives by an income tax in which the income from the out-of-state property is an item of the taxpayer's gross income. It is immaterial, in such a case, that the property producing the income is located in another state. *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308. And where the tangible property of a corporation has no taxable situs outside the domiciliary state, that state may tax the tangibles because the corporation exists under the law of its domicile. *Southern Pacific Co.* v. *Kentucky*, 222 U. S. 63.[12]

The precedents, holding it unconstitutional for a state to tax tangibles of a resident that are permanently beyond its boundaries, have not been applied to intangibles where the documents of owner interest are beyond the confines of the taxing jurisdiction or where the choses in action are mere promises of a nonresident without documents.[13] One reason that state taxation of a resident on his intangibles is justified is that when the taxpayer's wealth is represented by intangibles, the tax gatherer has difficulty in locating them and there is uncertainty as to which taxing district affords benefits or protection to the actual property that the intangibles represent. There may be no "papers." If the assessment is not made at the residence of the owner, intangibles may be overlooked easily by other assessors of taxes. A state is dependent upon its citizens for revenue. Wealth has long been accepted as a fair measure of a tax assessment. As a practical mode of collecting revenue, the states unrestricted by the federal Constitution have been accustomed to assess property taxes upon intangibles "wherever held

[12] See discussion in *Northwest Airlines* v. *Minnesota*, 322 U. S. 292.

[13] *Kirtland* v. *Hotchkiss*, 100 U. S. 491; *Fidelity & Columbia Trust Co.* v. *Louisville*, 245 U. S. 54; compare *Blodgett* v. *Silberman*, 277 U. S. 1, 8–12; *Maguire* v. *Trefry*, 253 U. S. 12; *Curry* v. *McCanless*, 307 U. S. 357, 365–68; *Wisconsin* v. *J. C. Penney Co.*, 311 U. S. 435, 444; *State Tax Comm'n* v. *Aldrich*, 316 U. S. 174, 180.

or deposited," belonging to their citizens and regardless of the location of the debtor.[14] So long as a state chooses to tax the value of intangibles as a part of a taxpayer's wealth, the location of the evidences of ownership is immaterial. If the location of the documents was controlling, their transfer to another jurisdiction would defeat the tax of the domiciliary state. As a matter of fact, there is more reason for the domiciliary state of the owner of the intangibles than for any other taxing jurisdiction to collect a property tax on the intangibles. Since the intangibles themselves have no real situs, the domicile of the owner is the nearest approximation, although other taxing jurisdictions may also have power to tax the same intangibles.[15] Normally the intangibles are subject to the immediate control of the owner. This close relationship between the intangibles and the owner furnishes an adequate basis for the tax on the owner by the state of his residence as against any attack for violation of the Fourteenth Amendment. The state of the owner's residence supplies the owner with the benefits and protection inherent in the existence of an organized government. He may choose to expand his activities beyond its borders but the state of his residence is his base of operations. It is the place where he exercises certain privileges of citizenship and enjoys the protection of his domiciliary government. Does a similar relationship exist between a trustee and the intangibles of a trust?

The trustee of today moves freely from state to state. The settlor's residence may be one state, the seat of a trust another state and the trustee or trustees may live in still

[14] *Kirtland* v. *Hotchkiss*, 100 U. S. 491. Compare *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308.

[15] See *Curry* v. *McCanless*, 307 U. S. 357, 365–68; *Wheeling Steel Corp.* v. *Fox*, 298 U. S. 193. Certain evidences of indebtedness have been held sufficient in themselves to justify a state's imposition of a succession tax upon their nonresident owner. *Wheeler* v. *New York*, 233 U. S. 434

another jurisdiction or may constantly change their residence.[16] The official life of a trustee is, of course, different from his personal. A trust, this Court has said, is "an abstraction." In federal income tax purposes it is sometimes dealt with as though it had a separate existence. *Anderson* v. *Wilson*, 289 U. S. 20, 27. This is because Congress has seen fit so to deal with the trust. This entity, the trust, from another point of view consists of separate interests, the equitable interest in the *res* of the beneficiary[17] and the legal interest of the trustee. The legal interest of the trustee in the *res* is a distinct right. It enables a settlor to protect his beneficiaries from the burdens of ownership, while the beneficiary retained the right, through equity, to compel the legal owner to act in accordance with his trust obligations. The trustee as the owner of this legal interest in the *res* may incur obligations in the administration of the trust enforceable against him, personally.[18] Nothing else appearing, the trustee is personally liable at law for contracts for the trust.[19] This is

[16] See *Hutchison* v. *Ross*, 262 N. Y. 381, 393.

[17] *Brown* v. *Fletcher*, 235 U. S. 589, 598-600; *Blair* v. *Commissioner*, 300 U. S. 5, 13.

[18] Scott, Trusts (1939), 487, 1400 *et seq.*; Williston, Contracts (1936) § 312; Bogert, Trusts and Trustees (1935) § 146.

[19] *Duvall* v. *Craig*, 2 Wheat. 45, 56; *Taylor* v. *Davis*, 110 U. S. 330, 335: "A trustee may be defined generally as a person in whom some estate, interest, or power in or affecting property is vested for the benefit of another. When an agent contracts in the name of his principal, the principal contracts and is bound, but the agent is not. When a trustee contracts as such, unless he is bound no one is bound, for he has no principal. The trust estate cannot promise; the contract is therefore the personal undertaking of the trustee. As a trustee holds the estate, although only with the power and for the purpose of managing it, he is personally bound by the contracts he makes as trustee, even when designating himself as such."

Lazenby v. *Codman*, 28 F. Supp. 949; *Prudential Ins. Co.* v. *Land Estates*, 31 F. Supp. 845; *Peyser* v. *American Security & Trust Co.*, 107 F. 2d 625.

the rule in Rhode Island.[20] Specific performance may be decreed against him.[21] Of course, the trustee when acting within his powers for the trust is entitled to exoneration or reimbursement [22] and the trust *res* may be pursued in equity by the creditor for payment.[23]

The Supreme Court of Rhode Island considered the argument that the laws of the state afforded no benefit or protection to the resident trustee. Although nothing appeared as to any specific benefit or protection which the trustee had actually received, it concluded that the state was "ready, willing and capable" of furnishing either "if requested." A resident trustee of a foreign trust would be entitled to the same advantages from Rhode Island laws as would any natural person there resident. *Greenough* v. *Tax Assessors, supra,* 488. There may be matters of trust administration which can be litigated only in the courts of the state that is the seat of the trust. For example, in the case of a testamentary trust, the appointment of trustees, settlement, termination and distribution under the provisions of the trust are to be carried out, normally, in the courts of decedent's domicile. See *Harrison* v. *Comm'n of Corporations,* 272 Mass. 422, 427. But when testamentary trustees reside outside of the jurisdiction of the courts of the state of the seat of the trust, third parties dealing with the trustee on trust matters or beneficiaries may need to proceed directly against the trustee as an individual for matters arising out of his relation to the trust. Or the resident trustee may need the benefit of the Rhode Island law to enforce trust claims against a Rhode Island resident. As the trustee

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[20] *Roger Williams N. Bk.* v. *Groton Manufacturing Co.,* 16 R. I. 504.

[21] *Warren* v. *Goodloe's,* 230 Ky. 514, 520.

[22] Scott, Trusts, § 244 *et seq.* and § 258

[23] Scott, Trusts, § 267 *et seq.* See *Ballentine* v. *Eaton,* 297 Mass. 389; *O'Brien* v. *Jackson,* 167 N. Y. 31.

is a citizen of Rhode Island, the federal courts would not be open to the trustee for such causes of action where the federal jurisdiction depended upon diversity. The citizenship of the trustee and not the seat of the trust or the residence of the beneficiary is the controlling factor.[24] The trustee is suable like any other obligor. There is no provision of the federal Constitution which forbids suits in state courts against a resident trustee of a trust created under the laws of a sister state. Consequently, we must conclude that Rhode Island does offer benefit and protection through its law to the resident trustee as the owner of intangibles. And, while it may logically be urged that these benefits and protection are no more than is offered a resident owner of land or chattels, permanently out of the state, the same reasons, hereinbefore stated on pages 5 and 6, apply that permit state property taxation of a resident owner of intangibles while denying a state power to tax similarly the resident's out-of-state realty.

No precedent from this Court called to our attention indicates that the federal Constitution contains provisions that forbid taxation by a state of intangibles in the hands of a resident testamentary trustee. In *Brooke* v. *Norfolk*, 277 U. S. 27, the state property tax there invalidated, evidently as violative of the Fourteenth Amendment, was assessed to a life beneficiary, on a *res*, composed of intangibles, when both the testator and the trustee were residents of another state where the trust was administered. *Safe Deposit and Trust Company* v. *Virginia*, 280 U. S. 83, held invalid a state's tax on a trust's intangibles, actually in the hands of the nonresident trustee and not subject to the control of the equitable owner, because it was an attempt to tax the trust *res*, intangibles actually in the

[24] *Bullard* v. *Cisco*, 290 U. S. 179, 190. See *Memphis Street R. Co.* v. *Moore*, 243 U. S. 299.

hands of a nonresident trustee. This was said to conflict with the Fourteenth Amendment as a tax on a thing beyond the jurisdiction of the taxing state.[25] See also *Graves* v. *Schmidlapp*, 315 U. S. 657, 663, where the sovereign power of taxation was held to extend to a state resident who by will disposed of intangibles held by him as trustee with power of testamentary disposition under a nonresident trust. Nothing in these cases leads to the conclusion that a state may not tax intangibles in the hands of a resident trustee of an out-of-state trust.[26]

State courts construe their statutes according to their understanding of state policy and apply them to such situations as their interpretation of the statutory language requires. In so adjudging, they are the final judicial authority upon the meaning of their state law. It is only in circumstances where their judgments collide with rights secured by the federal Constitution that we have power to protect or enforce the federal rights. In adjudging the taxability under state law of a resident trustee's ownership of intangibles, without reliance upon the residence of settlor or beneficiary or the location of the intangibles, various conclusions have been reached under state law and without regard to the Constitution of the United States. They are pertinent to our problem only as illustrations of the different viewpoints of state law.[27]

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[25] The power of a state to tax the equitable interest of a beneficiary in such circumstances was not presented. *Id.*, pp. 92 and 95.

[26] *Goodsite* v. *Lane* (C. C. A. 6th), 139 F. 593, holds that a state property tax on a trustee's intangibles for the sole reason that he resides in the taxing state is invalid. It would seem this was so decided because of the Fourteenth Amendment. We do not think this case gives proper recognition to the state's power to tax the owner of the legal title to the res.

[27] The state statute taxing property to trustee validly applies to the resident trustee: *Welch* v. *City of Boston*, 221 Mass. 155; *Harvard Trust Co.* v. *Commissioner of Taxation*, 284 Mass. 225, 230; *Mackay* v.

Nor do we think it constitutionally significant that the Rhode Island trustee is not the sole trustee of the New York trust. The assessment, as the statute in question required, was only upon his proportionate interest, as a trustee, in the *res*. Whatever may have been the character of his title to the intangibles [28] or the limitations on his sole administrative power over the trust,[29] the resident trustee was the possessor of an interest in the intangibles, sufficient, as we have explained, to support a proportional tax for the benefit and protection afforded to that interest by Rhode Island.[30]

Affirmed.

San Francisco, 128 Cal. 678; *Millsaps* v. *Jackson*, 78 Miss. 537; *McLellan* v. *Concord*, 78 N. H. 89; *Florida* v. *Beardsley*, 77 Fla. 803.

The state tax statute is inapplicable to the resident trustee: *Dorrance's Estate*, 333 Penn. 162; *Commonwealth* v. *Peebles*, 134 Ky. 121, 135; *Darrow* v. *Coleman*, 119 N. Y. 137; *Rand* v. *Pittsfield*, 70 N. H. 530. *Newcomb* v. *Paige*, 224 Mass. 516, and *Harrison* v. *Commissioner*, 272 Mass. 422, declined taxation on the ground of comity and thus distinguished *Welch* v. *City of Boston*, *supra*, 272 Mass. 428–29.

[28] Scott, Trusts, §§ 88.1, 103; Bogert, Trusts and Trustees, § 145.

[29] Scott, Trusts, § 194; *Brennan* v. *Willson*, 71 N. Y. 502; *Fritz* v. *City Trust Co.*, 76 N. Y. S. 625, aff. 173 N. Y. 622; *In re Campbell's Estate*, 13 N. Y. S. 2d 773.

[30] The state courts have reached varying conclusions under their statutes: See *People ex rel. Beaman* v. *Feitner*, 168 N. Y. 360; *Mackay* v. *San Francisco*, 128 Cal. 678; *McLellan* v. *Concord*, 78 N. H. 89; *Dorrance's Estate*, 333 Penn. 162; *Newcomb* v. *Paige*, 224 Mass. 516; *Harrison* v. *Commissioner*, 272 Mass. 422, 430–31.

SUPREME COURT OF THE UNITED STATES

No. 461.—October Term, 1946.

William Greenough and George Henry Warren, Jr., Trustees, Appellants, v. Tax Assessors of the City of Newport; and Edward L. Leahy, Tax Administrator of the State of Rhode Island.	Appeal from the Superior Court of the County of Newport, State of Rhode Island.

[June 9, 1947.]

Mr. Justice Frankfurter, concurring.

In view of the dissents elicited by the Court's opinion, I should like to state why I join it.

Rhode Island taxes its permanent residents in proportion to the value of their property. The State imposes the tax whether its residents own property outright or own it, legally speaking, in a fiduciary capacity. It is not questioned that the intangible assets in controversy could be included in the measure of the tax against the person of this trustee if he owned them outright. The doctrine that the power of taxation does not extend to chattels permanently situated outside a State though the owner was within it, *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194; *Frick* v. *Pennsylvania*, 268 U. S. 473, is inapplicable. The tax is challenged, as wanting in "due process," because the Rhode Island resident is merely trustee of these intangibles and the pieces of paper that evidence them are kept outside the State.

Rhode Island's system of taxing its residents—subjecting them to the same measure for ascertaining their ability to pay whether they hold property for themselves or for others——long antedated the Fourteenth Amendment. Rhode Island has imposed this tax, "it may be presumed, for the general advantages of living within the jurisdiction." *Fidelity & Columbia Trust Co.* v. *Louisville*, 245

U. S. 54, 58. It can hardly be deemed irrational to say, as Rhode Island apparently has said for a hundred years, that those advantages may be roughly measured, for fiscal purposes, by the wealth which a person controls, whatever his ultimate beneficial interest in the property. "The Fourteenth Amendment, itself a historical product, did not destroy history for the States and substitute mechanical compartments of law all exactly alike." *Jackman* v. *Rosenbaum Co.*, 260 U. S. 22, 31.

In any event, Rhode Island could in terms tax its residents for acting as trustees, and determine the amount of the tax as though a trustee owned his trust estate outright. Rhode Island has, in effect, done so by treating all Rhode Island residents alike in relation to their property holdings, regardless of their beneficial interests. That is the practical operation of the statute. It is that which controls constitutionality, and not the form in which a State has cast a tax. *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 280; *Wisconsin* v. *J. C. Penney Co.*, 311 U. S. 435, 443 *et seq.* Whether a Rhode Island trustee can go against his trust estate for the amount of the tax which Rhode Island exacts from him is of no concern to Rhode Island. Rhode Island's power to tax its residents is not contingent upon it. A trusteeship is a free undertaking.

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[June 9, 1947.]

Mr. Justice Jackson, dissenting.

If Rhode Island had laid a tax on one of its citizens individually, I should think it unassailable even if the basis for taxing him was that he held this trusteeship, and perhaps the tax on him could be measured by the value of the trust estate. In that case the state would tax only its own citizen. One is pretty much at the mercy of his own state as to the events of relationship for which it will tax him. If it wants to make the holding of a trusteeship taxable, I know of no federal grounds of objection. But that is not what is being done, nor what this decision authorizes.

If Rhode Island had taxed the individual, he might have sought reimbursement from the estate. Whether the estate was chargeable would be left to determination by the courts of the state supervising the trust. They might consider the nature of the tax to be a personal charge, as an income tax would doubtless be. Or they might find it to be an expense of administration, such as a transfer tax, and properly to be borne by the fund. But here no such decision is left to the courts which control the fund—the tax is laid on the trustee as such—the estate is the taxpayer.

Rhode Island claims the power to tax the estate solely because one of its trustees resides in that state. No prop-

erty is in Rhode Island and its courts are not supervising administration of the trust. The estate is wholly located in New York and the trustees derive their authority, powers and title from its courts and to them must account.

I had not supposed that a trust fund became taxable in every state in which one of its trustees may reside. Of course, in this instance it is proposed to tax only one-half of the estate as only one of the two trustees is resident in Rhode Island. But this seems to be an act of grace if there is a right to tax at all. The trustee has no power over, or title to, any fraction of the trust property that he does not have over all of it. If mere residence of a trustee is such a conductor of state authority that through him it reaches the estate, I see no reason why it should stop at a part, nor indeed why a trustee subject to the taxing power of several states, *Cf. Texas* v. *Florida*, 306 U. S. 398, may not also subject the trust fund to several state taxes by merely moving about.

The decision is a hard blow to the practice of naming individual trustees. It seems to me that there is no power in the state to lay the tax on the trust funds, despite unquestionable authority to tax its own citizen-trustee individually.

MR. JUSTICE MURPHY joins in this opinion.

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[June 9, 1947.]

Mr. Justice Rutledge with whom The Chief Justice concurs, dissenting.

I am in agreement with the views expressed by Mr. Justice Jackson, except that I intimate no opinion concerning whether Rhode Island could lay a tax upon one of its residents for the privilege of acting as one of two or more trustees, when the state's only connection with the trust arises from the fact of his residence. This is not such a case.

Whether or not due process under the Fourteenth Amendment forbids state taxation of acts, transactions, events or property is essentially a practical matter and one of degree, depending upon the existence of sufficient factual connections, having economic and legal effects, between the taxing state and the subject of the tax. I do not think the mere fact that one of a number of trustees resides in a state, without more, is a sufficiently substantial connection to justify a levy by that state upon the trust corpus, by an *ad valorem* tax either fractional or on the entirety of the *res*.

It may become necessary for claimants, beneficiaries or others to sue the trustee in Rhode Island or perhaps for him to join with other trustees in suing third persons there about trust matters. To that extent benefit and protection may be conferred upon the trust. But those

needs may arise in connection with any sort of business or activity, trust or other, located and conducted outside the state as largely as this trust's affairs. I had not supposed that merely keeping open the state's courts to such claims would furnish a sufficient basis for bringing within its taxing grasp all property affected by the claims' assertion. That the trust *res* here consists of intangibles does not seem to me a sufficiently substantial factor, in the circumstances presented, to justify so wide a reach of the state's taxing arm.

Mobilia sequuntur personam has its appropriate uses for sustaining the states' taxing powers affecting residents and their extrastate interests. But when it is applied to the split ownership of a trust, not only as between trustee and beneficiary but also as among several trustees, to bring the trust *res* within the several states' powers of taxation, merely by virtue of the residence in each of one trustee and nothing more, the fiction I think is carried too far. Something more than affording a domiciliary basis for service of process, coupled with the split and qualified representative ownership of such a trustee, should be required to sustain the state's power to tax the trust *res*, whether for all or only a fraction of its value.

Finally, whatever might be true of a single trustee or of several residing in a single state, I should doubt the thesis that the interest of one of two or more trustees in a trust is more substantial than that of a beneficiary or receives greater protection or benefit from the state of his residence. And if the beneficiary's residence alone is insufficient to sustain a state's power to tax the corpus of the trust, cf. *Brooke* v. *Norfolk*, 277 U. S. 27,[1] it would seem that the mere residence of one of a number of trustees hardly would supply a firmer foundation.

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[1] But cf. Holmes, J., dissenting in *Safe Deposit & Trust Co.* v. *Virginia*, 280 U. S. 83, 96.